

Attachment A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
v.
Plaintiff,
Defendants.)
JESE DAVID CARILLO
CASILLAS (2), ALEXIS JOEL
GARCIA PALOMINO (4), BRITTNEY
LEE ZARAGOZA (10), EDGAR OMAR
HERRERA FARIAS (16), ALFREDO
MAGANA GARIBAY (18), JUAN BRAVO
ZAMBRANO (19), MARCIAL BRAVO
ZAMBRANO (20), MIGUEL REYES
GARCIA (21), JOSE ADRIAN
MENDOZA (23),
Case No.
4:15-CR-6049-EFS-2, 4, 10,
16, 18, 19, 20, 21, 23
May 29, 2018
Richland, Washington
Pretrial Conference/Motion
Hearing
Pages 1 to 75

BEFORE THE HONORABLE EDWARD F. SHEA
SENIOR UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

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13 Proceedings reported by mechanical stenography; transcript
14 produced by computer-aided transcription.

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1 (May 29, 2018; 9:18 a.m.)

2 THE COURTROOM DEPUTY: All rise.

3 (Call to Order of the Court.)

4 THE COURT: Good morning to you all. Please be seated.

09:18:34 5 THE COURTROOM DEPUTY: Matter before the Court is United
6 States of America v. Jese David Carillo Casillas, et al., Cause
7 No. 4:15-CR-6049-EFS, Defendant Nos. 2, 4, 10, 16, 18, 19, 21,
8 and 23. And the attorneys for Defendant No. 20, Marcial Bravo
9 Zambrano, are also present, but the defendant is not present.

09:19:04 10 Counsel, please state your presence for the record.

11 We'll start with the Government first, and then we'll move to
12 the top row in the box and then over to counsel at counsel
13 table.

14 MS. VAN MARTER: Good morning, Your Honor. Stephanie
09:19:14 15 Van Marter and Caitlin Baunsgard, along with case agent Joe
16 Brazeau, present for the United States.

17 THE COURT: Thank you.

18 MR. SCHWEDA: Your Honor, Pete Schweda with Mr. Herrera
19 Farias.

09:19:25 20 MR. NIESEN: Good morning, Your Honor. Jeffrey Niesen
21 with Mr. Palomino.

22 MR. VIETH: Good morning, Judge. Nick Vieth for
23 Mr. Casillas.

24 MR. MARCHI: Good morning, Your Honor. Nicholas Marchi
09:19:36 25 on behalf of Mr. Garibay.

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1 MR. THERRIEN: Good morning, Your Honor. Ken Therrien
2 for Miguel Reyes Garcia.

3 MR. SMITH: Rick Smith on behalf of Juan Zambrano, Your
4 Honor.

09:19:45 5 MR. JOHNSON: Scott Johnson on behalf of Jose Mendoza.

6 MR. LARA: Victor Lara for Brittany Zaragoza.

7 MR. ZACHARY AYERS: Zachary Ayers and Walter Ayers on
8 behalf of Mr. Zambrano.

9 THE COURT: Mr. Zambrano was arraigned sometime on
09:20:00 10 Friday --

11 MR. ZACHARY AYERS: Correct.

12 THE COURT: -- and an order to that effect was entered
13 at about 4:45 on Friday, and as a result of that entry at that
14 time, on this weekend there was a lack of communication about
09:20:12 15 providing transportation for him to be here today.

16 MR. ZACHARY AYERS: I believe so.

17 THE COURT: And as a result, he's not here in court.
18 But I invite you to make any motions or request any hearings you
19 want on anything that goes on, including your case.

09:20:27 20 Okay?

21 MR. ZACHARY AYERS: Understood, Your Honor.

22 THE COURT: We can bring him back -- so nothing that
23 occurs today will prejudice him. We will take up the issue
24 right now of trial dates in your client's case and in the case
09:20:40 25 that we heard this morning, Mr. Palomino.

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1 Okay. Have a seat. Thanks.

2 MR. ZACHARY AYERS: Thank you, Your Honor.

3 THE COURT: Ms. Van Marter, let's talk about that right
4 at the outset.

09:20:53 5 And consistent with that, one of the attorneys is
6 telling me there's rolling discovery, a pejorative term in my
7 court, especially when the indictment is December 16th of 2015,
8 with a second superseding indictment 12-6 of '16.

9 Please tell me that that's not so; that that is
09:21:16 10 inaccurate; that there is no rolling discovery.

11 MS. VAN MARTER: There is no rolling discovery, Your
12 Honor. What was last disclosed to counsel of -- new counsel of
13 record is the majority of the discovery. That's the most recent
14 disclosure. So that's for the Ayerses -- obviously they didn't
09:21:30 15 have it previously -- as well as Mr. Niesen on behalf of
16 Mr. Palomino.

17 THE COURT: So that's discovery already provided --

18 MS. VAN MARTER: Yes.

19 THE COURT: -- to all the other counsel?

09:21:40 20 MS. VAN MARTER: Correct.

21 THE COURT: So it should be in their files.

22 MS. VAN MARTER: Correct.

23 THE COURT: Did anybody call you and tell you that there
24 was new discovery?

09:21:46 25 MS. VAN MARTER: No.

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1 THE COURT: Okay.

2 MS. VAN MARTER: Nobody contacted the United States to
3 that effect at all.

4 THE COURT: Okay.

09:21:51 5 MS. VAN MARTER: As to new counsel, we've had
6 conversations about the discovery that they've received. I've
7 only had one conversation with Mr. Vieth about any questions
8 that he may have or any additional information that he may like,
9 and I believe we've worked that through.

09:22:06 10 The only other discovery that was produced was pursuant
11 to the hearing that this Court was already -- we already
12 presided over; that had to do with Mr. Schweda's requests, and
13 we already went over that issue. And the only outstanding thing
14 is the CI disclosures that I have a court date -- or a date set
09:22:26 15 by this Court in August for those disclosures, which we've
16 already discussed in front of this Court a number of times.

17 THE COURT: Okay. Well, Mr. Niesen, I don't know
18 what -- Mr. -- the Ayerses, what is your position on going to
19 trial in October, given your client's charges? What charge is
09:22:40 20 your client charged with? You can speak from there.

21 MR. ZACHARY AYERS: Your Honor, he is charged with a
22 conspiracy in Count 1.

23 THE COURT: So Count 1.

24 MR. ZACHARY AYERS: We would agree to the continuance
09:22:51 25 that the other counsel is moving for as well today.

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1 THE COURT: This is not a continuance.

2 MR. ZACHARY AYERS: Or I mean --

3 THE COURT: This is a separate trial date. Nobody is
4 getting a continuance at this point.

09:23:00 5 MR. ZACHARY AYERS: Okay.

6 THE COURT: You can have a -- because the amended case
7 management order in Palomino set his trial for October. There's
8 been no amended case management order dealing with your client.
9 So as I put in a footnote, flagging it to the people who
09:23:15 10 received all of that, all of the counsel, anybody arrested
11 recently is going to trial in March of 2019.

12 MR. ZACHARY AYERS: Understood, Your Honor.

13 THE COURT: Okay.

14 MR. ZACHARY AYERS: That was the date we were
09:23:25 15 anticipating.

16 THE COURT: Thank you.

17 MR. ZACHARY AYERS: Thank you.

18 THE COURT: But if something arises -- let me know if
19 your client has different views.

09:23:32 20 Have you been able to talk with your client yet?

21 MR. ZACHARY AYERS: Only since last Friday, Your Honor.

22 We hadn't had a chance to talk with him about the dates yet.

23 THE COURT: Okay. Well, then if that develops, set a
24 hearing, and we'll deal with the issues --

09:23:43 25 MR. ZACHARY AYERS: Okay.

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1 THE COURT: -- at your convenience.

2 Okay. So that takes care of those two individuals.

3 They'll go to trial in March of next year, which gives them more
4 than adequate -- gives them adequate time to prepare, given the
5 amount of time every other attorney has had.

6 Mr. Vieth, you suggested that there was a need for more
7 Behind the Gavel analysis, and I'm perplexed because I don't get
8 why that is so.

9 MR. VIETH: Your Honor, do you want me to go to --

09:24:14 10 THE COURT: No, you're fine.

11 MR. VIETH: All right. In speaking with Behind the
12 Gavel -- and I did put a call in, I believe it was on Thursday
13 or Friday, my office, to Behind the Gavel to have them available
14 by phone if the Court has any questions. But the need, as I
09:24:34 15 understand it, was to continue to give counsel, not only myself
16 but everybody else, because I am now the lead attorney on
17 getting all of their budgets in order, making sure that they
18 have the proper funds, to give not only my office the ability to
19 call them, pinpoint potential discovery that is valuable to
09:24:59 20 me --

21 THE COURT: Sorry, Counsel. You're going to have to
22 repeat that again. Why is there additional work needed from
23 Behind the Gavel? I think I approved something over \$40,000 for
24 that.

09:25:09 25 MR. VIETH: I believe so, Judge.

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1 THE COURTROOM DEPUTY: I'm sorry, Judge. The
2 interpreter needs the microphone -- can you speak into the
3 microphone, please, so she can pick it up in the headset?

4 THE COURT: Okay.

09:25:20 5 MR. VIETH: Oh. Sorry about that.

6 Do I need to start over, Ms. Interpreter?

7 Okay. And so, Your Honor, as I understand it and the
8 request from Behind the Gavel was to continue to provide the
9 same expertise that they have provided, to other counsel,
09:25:38 10 previous counsel to the more recent appointed counsels.

11 THE COURT: Define most -- "more recent appointed
12 counsel."

13 MR. VIETH: Well, Mr. Ayers, I believe, was just
14 appointed. I believe there was one or two --

09:25:51 15 THE COURT: Mr. Niesen.

16 MR. VIETH: Mr. Jeff Niesen as well.

17 Sorry, Jeff.

18 And so it's my understanding that it's their request
19 that they be able to provide the same assistance that they have
09:26:03 20 given my office and other offices in the past with their same
21 expertise in pinpointing certain discovery and helping those
22 members of the defense with the same opportunities that we've
23 received.

24 THE COURT: Well, why would that motion come through you
09:26:23 25 rather than through Mr. Niesen or Mr. Ayers?

1 MR. VIETH: It's my understanding, Your Honor, that when
2 I received the case, that the lead counsel that ended up having
3 to withdraw and I took over, I was the point for the Ninth
4 Circuit budgeting coordinator Blair Pearlman, and then it was my
5 responsibility to put together the budget for Behind the Gavel.

6 THE COURT: Okay. That makes more sense to me. Thanks
7 for that clarification.

8 MR. VIETH: Thank you, Judge.

9 THE COURT: Okay. All right. Let's talk about what
10 motions we have.

11 What are we doing today?

12 For the record, the same rulings I've made in the past
13 regarding shackling remain in place, given the number of
14 defendants, the stakes, and the public interest in safety for
15 the defendants, counsel, and the courtroom staff; six in custody
16 defendants will be permitted to be shackled by the United States
17 for this hearing.

18 Okay. What's next?

19 MS. VAN MARTER: Are you asking me? I'm sorry, Your
20 Honor. I'm aware of only one pending motion thus far before the
21 Court, and that is on behalf of Mr. Herrera Farias in regard to
22 his motion in limine to exclude reference to his prior 2012 drug
23 conviction that was --

24 THE COURT: Okay. Let's argue that. Stay at the
25 podium.